

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

MAR 24 2017

Clerk, U S District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHANE RUSSELL SAVAGE,

Defendant.

Cause No. CR 04-128-BLG-SPW

ORDER

This matter is before the Court on Defendant/Movant Savage's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. The motion had already been extensively briefed when a stay was entered pending the United States Supreme Court's decisions in *Welch v. United States*, No. 15-6418 (U.S. cert. granted Jan. 8, 2016), and then extended pending the Court's decision in *Beckles v. United States*, No. 15-8544 (U.S. cert. granted June 27, 2016).

The *Beckles* stay was ordered to "remain in effect until 14 days after the Supreme Court issues its decision." Text Order (Doc. 90). *Beckles* was decided on March 6, 2017.

While the stay was still in effect, Savage moved to defer ruling for 14 days while counsel seeks the client's consent to withdraw the motion.

On March 20, 2017, the United States moved to dismiss the § 2255 motion,

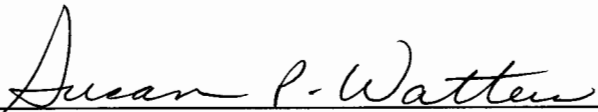
asking the Court to rule that Savage is not entitled to relief on the merits.

The Federal Rules of Civil Procedure apply in § 2255 proceedings to the extent they are not inconsistent with the controlling statutes or the Rules Governing § 2255 Proceedings. Rule 12, § 2255 Rules. The statutes and rules do not speak to withdrawal of a § 2255 motion. Under Fed. R. Civ. P. 41(a)(1)(A)(i), a § 2255 movant may voluntarily dismiss his motion by filing notice “before the opposing party serves either an answer or a motion for summary judgment.” Alternatively, the movant may voluntarily dismiss his motion by filing “a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

Neither of these options is available here. The United States has filed more than one answer (Docs. 78, 86) and has not agreed to a stipulated dismissal but seeks a ruling on the merits.

Accordingly, IT IS HEREBY ORDERED that Savage’s motion to defer ruling (Doc. 91) is DENIED. Briefing will proceed on the United States’ motion to dismiss.

DATED this 24th day of March, 2017.



Susan P. Watters
United States District Court